IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 132 of 2002
with
Civil Application No. 2412 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARDIA CHEMICALS LIMITED
Versus
GUJARAT ELECTRICITY BOARD

Appearance:
1. Appeal from Order No. 132 of 2002
MR SN SOPARKAR SR. ADVOCATE WITH MR DEVESH A BHATT
for appellant.
MR NIRAV K MAJMUDAR for Respondents No. 1-2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/03/2002

ORAL JUDGEMENT

1. In this Appeal from Order which is filed under Order 43 Rule 1 (r) of the Code of Civil Procedure ('the

Code' for short), appellant - Mardia Chemicals Limited a company registered under the provisions of the Companies Act, 1956 ('the Companies Act' for short) seeks to challenge the order dated March 20, 2002 recorded below application Ex.5 of Special Civil Suit No.18 of 2002 by the learned 2nd Joint Civil Judge (S.D.)., Surendranagar by which application Ex.5 seeking ad-interim injunction under the provisions of Order 39 Rule 1 and 2 of the Code filed by the appellant against the respondent - Gujarat Electricity Board ('GEB' for short) - for restraining them from disconnecting the power connections bearing Consumer Nos.17435 and 17447 in the Caustic Chlorine Plant of the appellant company situated in a backward area of Sayala Taluka of Surendranagar District, till disposal of the suit, came to be rejected.

2. Appellant is the original plaintiff whereas respondents are the original defendants and for the sake of convenience and brevity they are referred to in this judgment as 'plaintiff' and 'defendants'.

3. In the peculiar facts and circumstances of the case and in view of the stake of more than Rs.85 crores of energy charges of the GEB involved in this Appeal from Order, with the consent of the learned advocates of the parties, the matter is heard at length at admission stage and decided by way of final hearing by this judgment.

4. Before highlighting the controversy posed for determination in this Appeal from Order, it would be advantageous to refer to the facts of the plaintiff's case and the contentions raised in the written statement by the defendants, in a nut shell, which are as under:

4.1. The plaintiff is a company registered under the provisions of the Companies Act whereas defendant No.2 is a statutory body and defendant No.1 is the Superintending Engineer of defendant No.2 at Surendranagar. The plaintiff company has been allotted SC Consumer No. 17435 and 17447 for its Caustic Chlorine Plant estimated over 450 crores and the electric power is being consumed by the plaintiff company for the production of Caustic Soda, Chlorine and other chemicals in its plant.

4.2. Defendants issued notice dated November 16, 1999 for disconnection of power supply to the plaintiff provided by the defendants. Aggrieved thereby and dissatisfied with the said action on the part of the defendants, the plaintiff had filed Revision Application before Gujarat Electricity Regulatory Commission ('GERC' for short) at Ahmedabad. The GERC was pleased to direct

the defendants to reconnect the power supply on the condition of plaintiff paying Rs.50 lacs within 7 days from the date of the order. Accordingly, vide covering letter dated December 23, 1999 plaintiff paid Rs.50 lacs and requested the defendants to reconnect the power supply of CCP Unit Consumer No.17447 against which the defendants had obtained stay order from this Court. Therefore, the plaintiff was required to approach the Gujarat Government and requested the Government and explained the situation. As a result of it, a meeting was held and thereafter the defendants agreed to reconnect the power supply to the installation No. 17447 of 35000 MVA and vide its letter dated July 20, 2000 informed the plaintiff that they are prepared to reconnect the power supply subject to the conditions as mentioned below:

(i) That the plaintiff will pay Rs.10 lacs every month towards past energy dues till formulation/sanction of rehabilitation scheme of BIFR, New Delhi;

(ii) The plaintiff will pay Rs.1,000/- towards reconnection charges in the office of the Executive Engineer, O&M Division, Gujarat Electricity Board, Surendranagar before reconnection of power supply;

(iii) As regards the current electricity bills after reconnection of supply, the plaintiff will arrange payments at interval of every 15 days without waiting for the issuance of monthly energy bills by the defendant. This payment shall be made on the basis of the actual consumption and out of the realisation of the plaintiff's product. The fortnightly payments as regard this shall be generally made at regular intervals and if such days fall on a Sunday or on holiday, the immediate next working day shall be considered for making such payments;

(iv) The entire activity will be monitored by GEB by posting an officer at plaintiff's factory office itself. The officer will monitor the consumption of the energy and provision for payment as stated above. The financial burden on account of salaries and allowances of such officer shall be borne by the plaintiff company;

(v) In any event if there is a lapse in making payments according to the

schedule, the defendants shall reserve their right to recover the delayed payments charges and also to disconnect the power supply as per the provision u/s. 24 of the Indian Electricity Act, 1910."

4.3 On receipt of the letter dated July 20, 2000 addressed by the defendants to the plaintiff, the plaintiff immediately on the same day addressed a letter to the defendants and confirmed to abide by all the conditions as referred to in defendants' letter dated July 20, 2000 and further requested the defendants to reconnect the power supply immediately.

4.4. It is the case of the plaintiff that the plaintiff goes on making regular payment of the electricity consumption without waiting for the bill to be issued fortnightly and plaintiff also goes on making payment of Rs.10 lacs every month towards the past arrears. The plaintiff has, therefore, not committed any default in complying with the terms and conditions mentioned in the letter dated July 20, 2000. According to the plaintiff, the letter dated July 20, 2000 which is addressed by the defendants to the plaintiff and accepted by the plaintiff vide letter dated July 20, 2000 is nothing but an agreement between the plaintiff and the defendants and plaintiff has never committed breach of any of the terms and conditions of the said agreement. It is the case of the plaintiff that the defendants after having entered into an agreement with the plaintiff, are not entitled to commit any breach or deviate from the same and the act on the part of the defendants or deviation or any kind of breach would be barred by the doctrine of promissory estoppel.

4.5. It is the case of the plaintiff that it is a sick unit and, therefore, the plaintiff filed a reference under Section 15 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA' for short) being Reference No.199/2001 before the Board for Industrial and Financial Reconstruction ('BIFR' for short). The said reference has been rejected by the BIFR against which the plaintiff has preferred an appeal before the AAIFR.

4.6. The defendants demanded Rs.25 lacs per month instead of Rs.10 lacs per month and this itself causes a lot of inconvenience to the plaintiff. Notwithstanding the said fact, the plaintiff goes on depositing the said amount of Rs.25 lacs every month even today.

4.7. It is the case of the plaintiff that in spite of the aforesaid fact situation, the State Government, in order to help their own company, that is, Gujarat Alkalies and Chemicals Limited ('GACL' for short) has tried to put burden on the plaintiff and, therefore, the plaintiff was called in the Chamber of the Industries Minister to discuss regarding issue of price cutting policy of the plaintiff and the Government arrears from the plaintiff on December 12, 2001. In the said meeting, Managing Director of GACL was also present. The said act on the part of the defendants as well as Government is malafide because both of them wanted to favour GACL as the plaintiff is a great competitor of GACL. Therefore, a plan was hatched and pursuant to the plan the plaintiff was called on December 12, 2001 in the chamber of the Industries Minister of State of Gujarat and pursuant to the said meeting, the defendants have issued a letter dated January 30, 2002 to the plaintiff wherein the total arrears of the energy bills was shown at Rs.85,28,64,838.84 Ps. in following breakup:

(i) Rs.44,15,69,212.24 arrears of principal amount alongwith the bill of November 2001.
(ii) Rs.19,25,52,517.44 DPC upto April 30, 2002.
(iii) Rs.21,87,43,109.16 Delayed payment charges from 1.5.2000 to 31.12.2001

In the said notice it is also stated that the said notice is issued under section 24 (1) of the Indian Electricity Act, 1910 ('the Act' for short) and the plaintiff was asked to pay up the said amount within ten days from the date of issuance of the notice failing which on expiry of the aforesaid period the electricity supply will be cut off without further notice and the electricity supply shall remain disconnected until the aforesaid amount together with expenses incurred by the GEB in cutting off and reconnecting the supply are paid to the GEB. According to the plaintiff, the said notice dated January 30, 2002 is illegal, malafide, unauthorised, improper and unjust and against the principles of natural justice and barred by the doctrine of promissory estoppel and therefore the plaintiff has filed the suit for a declaration to declare that the notice dated January 30, 2002 issued by the defendants is wrong, illegal, malafide, unauthorized, improper, unjust, against the principles of natural justice and barred by principles of promissory estoppel and further to declare that the defendants are not entitled to take any action against the plaintiff in respect of past arrears in view of the plaintiff being a sick unit and a reference under Section

15 (1) of the SICA is registered vide Registration No.199/2001 before the BIFR which has been rejected and against the order of rejection the plaintiff has preferred an appeal before AAIFR which is pending.

4.8 Alongwith the suit, the plaintiff has also filed application Ex.5 under the provisions of Order 39 Rule 1 and 2 of the Code against the defendants for ad-interim injunction restraining the defendants from disconnecting the power supply to consumer No.17435 and 17447. It is contended that the plaintiff has a prima facie case and balance of convenience also tilts in its favour. If the injunction is not granted, irreparable loss would be caused to it. On this premises, it is prayed that the reliefs claimed in the application Ex.5 may be granted.

4.9. The defendants on being served with notice, contested the suit as well as application Ex.5 by filing their written statement and written objections at Ex.8. It is contended that the suit filed by the plaintiff is premature as the plaintiff has approached the GERC and the proceedings are pending. The suit is filed on insufficient court fee stamp. It is contended that the plaintiff was given concession for payment of its dues to the defendants as the plaintiff has approached the Government and as the plaintiff has approached the Government, the concession for payment of arrears of consumption was given to the plaintiff. It was contended that the concession continued upto the final orders of reference No.103/1999 which was pending before the BIFR and no further. The said reference was rejected by the BIFR and against the rejection of the reference, the plaintiff filed appeal before the AAIFR and the said appeal was withdrawn. The plaintiff was therefore not entitled to concession granted by the defendants vide their letter dated July 20, 2000. The plaintiff has also concealed the fact that another reference being Reference No.270 of 2000 was registered before the BIFR which was also rejected and the appeal filed against the said order was also withdrawn. It was also contended that the third reference being Reference No.199/2001 filed by the plaintiff before the BIFR is also rejected. Therefore, the concession which was granted by the plaintiff vide letter dated July 20, 2000 upto formulation and sanction of rehabilitation scheme by BIFR and the first reference being Reference No.103 of 19999 which has been already rejected and the appeal filed against the said order has been withdrawn, the plaintiff is not entitled to get any protection as per condition No. (i) contained in the letter dated July 20, 2000. It is also contended that the defendants have a right to withdraw the concession

given to the plaintiff vide their letter dated July 20, 2000. The plaintiff by filing false reference before the BIFR has tried to evade payment of RS.85,28,64,838.34 ps. which is due from the plaintiff towards the energy consumption and the defendants have right to disconnect the power supply under section 24 (1) of the Act which is a statutory right available to he defendants. So far as the allegation with regard to the meeting in the chamber of the Industries Minister is concerned, the same is denied. It is denied that the defendants have issued notice in collusion with the Ministry of Energy. It is denied that the right of the defendants to disconnect the electricity supply to the plaintiff is barred by section 22 of the SICA. It is as contended that letter dated July 20, 2000 issued by the defendants was not a contract but it is only a concession to enable the plaintiff to pay up the arrears to the GEB till the formulation and sanction of the rehabilitation scheme by the BIFR. It is also denied that the notice issued to the plaintiff is malafide. It is also pleaded that there is no prima facie case in favour of the plaintiff nor the balance of convenience tilts in favour of the plaintiff. If the injunction is granted, irreparable loss would be caused to the defendants as the defendants would be financially affected and it will cause hardship in the administration of the defendants and therefore ultimately it is prayed to dismiss the application Ex.5.

4.10. The learned trial Judge having heard the learned advocates for the parties and on having considered the pleadings and the documents produced in support of their pleadings, came to the conclusion that the letter dated July 20, 2000 is not a contract but it is merely an arrangement between the parties till the formulation/sanction of rehabilitation scheme by the BIFR, New Delhi and since in view of the fact that the BIFR has rejected the reference filed by the plaintiff thrice, the defendants are entitled to withdraw the said letter. It is also held that there is no question of promissory estoppel on the part of the defendant GEB as the plaintiff has represented before the defendants for granting concession on payment of Rs.10 lacs to restore the supply of energy till formulation/sanction of rehabilitation scheme by the BIFR. So far as Ex.22 of the SICA is concerned, it is of no help to the plaintiff and the defendants have not filed suit, on the contrary the plaintiff has filed the suit. Defendants have issued only the statutory notice dated January 30, 2002 under the provisions of Section 24 (1) of the Act. It is further held by the learned trial Judge that the plaintiff company has tried to evade legal recovery of

the GEB by claiming relief against disconnection of electricity supply and to recover the amount of past arrears is a statutory right under the Act. There is no prima facie case in favour of the plaintiff, nor balance of convenience tilts in its favour. So far as irreparable injury is concerned, the learned trial Judge has observed that if the injunction is granted, the defendants would suffer irreparable injury as the defendants cannot function without money which would affect the functioning of the GEB. On the aforesaid premises, the learned trial Judge has recorded categorical finding and resultantly application Ex.5 is rejected which has given rise to the present appeal at the instance of the original plaintiff.

5. Mr. Soparkar, learned Senior Counsel appearing for the plaintiff raised following contentions:

(I) There was a valid contract between the plaintiff and the defendants by which defendants have agreed to continue to supply electricity to the plaintiff against payment of Rs.10 lacs per month (later on raised to Rs.25 lacs per month) towards past dues and in view of this binding contract, it does not empower the defendants to insist for payment of past dues at this stage or to discontinue power for nonpayment of such dues when the plaintiff has not committed any breach of the said contract.

To canvass the proposition that the letter dated July 20, 2000 issued by the defendants in favour of the plaintiff which has been accepted by the plaintiff is a binding contract, the learned counsel has cited the following decisions:

(A) Kollipara Sriramulu (dead) by his legal representative v. T. Aswatha Narayana (dead), AIR 1968 SC 1028;
(B) Dr. Jiwan Lal and others v,. Brij Mohan Mehta and another, AIR 1973 SC 559;
(C) Punjab State Electricity Board, Patiala v. M/s. Abnash Textile Trading Agencies, Ambala City, AIR 1986 P&H 323.

(II) The impugned notice dated January 30, 2002 is invalid, illegal, contrary to law and action based on this notice is therefore impermissible.

To canvass the aforesaid proposition, the learned counsel has relied upon the following judgments:

(A) Corporation of the City of Nagpur v. The Nagpur Electric Light and Power Company Limited, AIR 1958 Bombay 498;
(B) Maharashtra State Electricity Board v. M/s. Madhusudandass and Brothers, AIR 1966 Bombay 160.

(III) Since the plaintiff's appeal is pending before the AAIFR which is an appeal under the provisions of SICA, it is not open to the defendants to disconnect the power supply.

(IV) The defendants have acted arbitrarily or maliciously and they are also acting contrary to the doctrine of promissory estoppel.

On the aforesaid premises, the learned counsel contended that there is no prima facie case in favour of the plaintiff, balance of convenience also does not tilt in favour of the plaintiff and if injunction is not granted more than 1100 workers would be unemployed as the plaintiff company would closed down in the event of disconnection of power supply to it and therefore according to the learned senior counsel, the order which is impugned in this appeal is required to be quashed and set aside by granting injunction as prayed for in the application Ex.5 till disposal of the suit and therefore appeal requires admission and he therefore urged to admit the appeal.

6. Mr. Majmudar, learned counsel for the defendants contended that there is no concluded contract. The letter dated July 20, 2000 issued by the defendants in favour of the plaintiff was the off-spring of the request made by the plaintiff company to the State Government for reconnection of the power supply and in pursuance of the said request the Government of Gujarat has advised the GEB to reconnect the power supply subject to the terms and conditions contained in the letter dated July 20, 2000. According to the learned counsel, condition (i) of the said letter amply clear and it unequivocally suggests that the plaintiff will have to pay Rs.10 lacs every month against the past dues till formulation/sanction of the rehabilitation scheme of the BIFR, New Delhi. It is also contended by the learned counsel that the plaintiff has filed first Reference being Reference No.103 of 1999 before the BIFR which came to be dismissed and the appeal preferred against the said order came to be withdrawn on that very day. Therefore, the reference for formulation/sanction of rehabilitation scheme came to be rejected and from that very day the concession granted vide letter dated July 20, 2000 came to an end. What is

asserted by the learned counsel is that the plaintiff cannot be permitted to take advantage of clause (1) of the letter dated July 20, 2000 because by filing one after another reference with a view to show that till today the rehabilitation scheme has not been formulated or sanctioned by the BIFR it cannot be permitted to enjoy the electricity only on payment of RS.10 lacs (which has been subsequently raised to RS.25 lacs) which is a very meagre amount and even less than the interest of the total outstanding from the plaintiff. The learned counsel further contended that the principles of promissory estoppel would not be applicable to the facts of the present case. On the contrary the plaintiff has to fulfil its promise, that is, on adjudication of reference No.103 of 1999 it had to come forward with the clear case that the reference has been decided against it and therefore it is not entitled to avail the facility of continued supply of electricity on payment of the meagre amount of Rs.10 lacs only which has been subsequently raised to Rs.25 lacs. It is also contended by the learned counsel that Section 22 of the SICA cannot be made applicable to the facts of the present case since in view of the fact that the defendants have not filed any suit but the defendants have issued a notice under Section 24 (1) of the Act which is a statutorily prescribed notice under the Act and as per the said provisions the defendant GEB is entitled to disconnect the electricity supply forthwith. Lastly it is contended that there is no prima facie case in favour of the plaintiff nor the balance of convenience tilts in its favour. On the contrary there is prima facie case in favour of the defendants and the balance of convenience also tilts in their favour and if the injunction is granted, the defendants have to face tremendous irreparable injury which cannot be compensated in terms of money as the defendant GEB cannot run without funds which would adversely affect the functioning of the GEB and in that event it may not be able to supply electricity to small companies and farmers. The learned counsel also contended that in the last reference being Reference No.199 of 2001 filed by the painful before the BIFR, it has observed in its order that the plaintiff is not rendering the correct accounts by showing its balance sheet and has not come with clean hands and therefore the plaintiff is disentitled to equitable relief of injunction and deserves no protection and in view of this also the plaintiff is not entitled to the discretionary relief of injunction. He therefore urged that there is no merit in the Appeal from Order which deserves to be dismissed and urged that the appeal may be dismissed. Mr. Majmudar, learned counsel for the defendants also

heavily pressed for costs. He urged that heavy cost may be imposed on the plaintiff and the appeal may be dismissed with costs.

(I) To canvass the proposition that there is no concluded contract between the parties, Mr. Majmudar, learned counsel for the defendants relied upon the following judgments:

(A) Multichannel (India) Limited v. Kavitalaya Productions Pvt. Ltd., AIR 1999 Madras 59;
(B) M/s. Saral Trading Co. v. M/s. Mahesh Steel Traders, New Delhi, AIR 1987 Delhi 4.

(II) To canvass the proposition that in suit challenging the validity of the electricity consumption bill in due course, injunction should not be granted, he relied upon the following judgments:

(A) Siliguri Municipality and others v. Amalendu Das, AIR 1984 SC 653;
(B) Assistant Collector of Central Excise v. Dunlop India Limited, AIR 1985 SC 330;
(C) Union Territory of Pondicherry v. P.V. Suresh, (1994) 2 SCC 70 (Head Note (B) and (D);
(D) Kiran Industries, Mehsana v. Gujarat Electricity Board, 1995 (2) GLR 1158;
(E) I.N. Mahabaleswara Madyasta v. Karnataka Electricity Baord, AIR 1994 Karnataka 74;
(F) A.E.N.,R.S.E.B. v. Shyam Singh and another, AIR 1998 Rajasthan 331;
(G) Andhra Pradesh State Electricity Board v. M/s. Andhra Cements Limited, AIR 1991 AP 350.

7. To deal with the first contention as to whether there was a valid and binding contract entered into between the plaintiff and the defendants, it would be relevant to note that the defendants issued notice dated November 16, 1999 to disconnect the power supply to the plaintiff as the plaintiff has failed to pay up the dues of the electricity charges to the defendants and therefore the plaintiff approached the GERC at Ahmedabad and the GERC directed the reconnection of power supply on the condition of the plaintiff paying Rs.50 lacs within seven days from the date of the order. Against the said order the defendant GEB approached this Court and obtained stay order. The plaintiff has therefore approached the Government of Gujarat and requested the Government and explained the situation and as a result of that a meeting was held and thereafter the defendants agreed to reconnect the power supply to the installation

No.17447 of 35000 MVA and vide their letter dated July 20, 2000 informed the plaintiff that the defendants are prepared to reconnect the power supply subject to the conditions contained in the said letter. Condition No. (i) contained in the said letter is appropriate and relevant to decide the point at issue which reads as under:

"(i) That the plaintiff will pay Rs.10 lacs every month towards past energy dues till formulation/sanction of rehabilitation scheme of BIFR, New Delhi."

(emphasis supplied).

It would be relevant to note that the said letter was issued by the defendants on request made by the plaintiff to the State Government and the State Government has advised the defendants to reconnect the power supply. It would also be relevant to note that the plaintiff company replied on the same day that it has accepted the terms and conditions contained in the said letter. The question arises therefore is as to whether the letter dated July 20, 2000 written by the defendants and accepted by the plaintiff on the same day is a contract or merely an arrangement? On having perusal of condition No. (i) contained in the letter dated July 20, 2000, according to me, it is merely an arrangement because as per the said condition, the relief granted to the plaintiff company was till the formulation/sanction of rehabilitation scheme by the BIFR, New Delhi. Putting it differently, the moment the BIFR decides the reference filed by the plaintiff the arrangement comes to an end ipso facto. There is no dispute that the plaintiff company has filed Reference No.103 of 1999, that is, prior to the issuance of the letter dated July 20, 2000. Therefore, on the day of issuance of the said letter reference was pending. That reference also came to be rejected on July 25, 2000, that is, after five days of the issuance of this letter by the defendants and acceptance by the plaintiff. The plaintiff preferred appeal before the appellate forum against the rejection of the reference by the BIFR. The Appeal also came to be withdrawn. Therefore the moment the appeal is withdrawn the reference is concluded which came to be rejected. Therefore, on the day of withdrawal of the appeal which is obviously subsequent to the issuance of the letter dated July 20, 2000 the said arrangement automatically i.e., ipso facto came to an end and the plaintiff cannot insist that the said arrangement should be continued for further period. It has also come in the evidence that thereafter the plaintiff has filed second reference

bearing No.270/2000 which came to be rejected on March 9, 2001 by the BIFR. Against that order also appeal was preferred which subsequently came to be withdrawn and thereafter third reference being Reference No.199 of 2001 which was filed also came to be rejected on February 27, 2002 by BIFR. It is the contention of the plaintiff that against the said rejection of the reference, appeal is preferred and the same is pending before appellate forum i.e., AAIFR and therefore issue of formulation/sanction of rehabilitation scheme by the BIFR is still pending and till the decision by the appellate authority, the defendants are not permitted to issue impugned notice dated January 30, 2002, has no substance. The concession granted vide letter dated July 20, 2000 or with a view to formulate/sanction the rehabilitation scheme by the BIFR in connection with reference No.103 of 1999 which was filed and pending at the relevant time. If the plaintiff's contention is accepted then it would amount to rewrite contenting No. (i) contained in the letter dated July 20, 2000 which cannot be the intention and is not the intention of the defendants that the plaintiff should deposit only RS.10 lacs (which is subsequently raised to Rs.25 lacs) every month till time immemorial the rehabilitation scheme of the BIFR is formulated/sanctioned, and the plaintiff can make any number of references. Therefore, according to me, the said arrangement has come to an end on the rejection of the first reference which has been reached the finality on the withdrawal of the appeal by the plaintiff from the appellate forum i.e., AAIFR.

8. The ratio laid down in the judgments of the Supreme Court in Kollipara Sriramulu (supra) and Dr. Jiwan Lal's cases (supra) and the judgment of Punjab & Haryana High Court in Punjab State Electricity Board's case (supra) relied upon by Mr. Soparkar, learned counsel for the plaintiff is not applicable to the facts of the present case as the said judgments are related to concluded contract and, therefore, they are not of any help or assistance to the case of the plaintiff in view of the fact that I have observed in earlier paragraphs of this judgment that the letter dated July 20, 2000 is not a concluded contract but it is an arrangement between the plaintiff and the defendants till the rehabilitation scheme is formulated/sanctioned by BIFR.

9. In Multichannel (India) Limited's case (supra) relied upon by Mr. Majmudar, learned advocate for the respondents, the Madras High Court has observed that when the terms of the contract itself is disputed motion for injunction can be refused on the ground of comparative

convenience. In M/s. Saral Trading Company's case (supra), Delhi High Court has held that the suit based on oral contract which was uncertain and inequitable and enforceability also doubtful, injunction pending the suit likely to cause huge loss, grant of injunction is illegal.

10. Applying the aforesaid principles enunciated by the Madras High Court and Delhi High Court to the facts of the present case, at the cost of repetition, it may be stated that letter dated July 20, 2000 is not a concluded contract but it is merely an arrangement which has come to an end on the rejection of the first reference and therefore injunction restraining the levy of the bill cannot be granted.

11. This takes me to the second contention raised by Mr. Soparkar with regard to the impugned notice dated January 30, 2002 which according to him is invalid, illegal and contrary to law. According to Mr. Soparkar, the aforesaid notice under Section 24 (1) of the Act is invalid as it seeks to levy interest on the dues as well as the delayed payment charges over and above the arrears of the past dues. According to Mr. Soparkar, the impugned notice is without any details as no details are given in the notice or reply of the defendants and the amount is grossly overstated and since the said notice is vague and therefore it is bad and illegal.

In Corporation of the City of Nagpur's case (supra), it is observed by a Division Bench of Bombay High Court that the amount stated in the notice under Section 24 (1) of the Act must be accurate and if it is in excess of what is legally due then the notice given under Section 24 (1) of the Act would be ineffective. The powers conferred on an electrical undertaking by Section 24 (1) of the Act are very drastic and therefore strict compliance with the provisions of that section is expected.

In Maharashtra State Electricity Board's case (supra), a Division Bench of the Bombay High Court has held that when there is a bonafide dispute between the parties, it is not justified in cutting off the electricity supply. According to me, the ratio laid down in both the aforesaid judgments which have been referred to and relied upon by Mr. Soparkar, learned counsel for the plaintiff, is not applicable to the facts of the present case in view of the clear and unequivocal statement made in the impugned notice dated January 30, 2002 wherein the break up is also given and further more

dispute is not bonafide as the amount of energy charges were admitted while entering into arrangement made between the parties on July 20, 2000 and so far as the delayed payment charges are concerned, plaintiff is bound to pay the same as plaintiff has delayed in making the payment of energy charges. Therefore, the impugned notice dated January 30, 2002 is not vague and it can be acted upon. Therefore, the second contention raised by Mr. Soparkar is also rejected.

12. This takes me to the third contention of the plaintiff, that is, since the appeal is pending before the AAIFR under the provisions of SICA it is not open for the defendants to disconnect the power supply. At the cost of repetition, I say that in view of condition (i) contained in the letter dated July 20, 2000 which talks about the rehabilitation scheme by the BIFR the first reference filed by the plaintiff being Reference No.103 of 1999 came to be rejected, the said arrangement has come to an end. It is nowhere stated in the said letter that the plaintiff is permitted to file one after another reference and till the rehabilitation scheme by BIFR is formulated/sanctioned the defendants are bound to accept Rs.10 lacs per month which has been subsequently enhanced to Rs.25 lacs per month. Therefore, according to me, the third contention is also without any merits and is liable to be rejected and accordingly it is rejected.

13. Coming to the fourth contention raised by Mr. Soparkar, learned counsel for the plaintiff, that doctrine of promissory estoppel is applicable to the present case and defendants are estopped from issuing the impugned notice, on having perusal of the said letter it is the plaintiff who initiated and made the request to the State Government for reconnection of power supply and the Government of Gujarat advised the defendant GEB to reconnect the power supply and therefore by way of mutual arrangement terms and conditions are set out therein and the defendants have not given any promise. On the contrary, the plaintiff has given promise that the arrangement of getting the power supply on payment of Rs.10 lacs as a condition (i) till the rehabilitation scheme is sanctioned by the BIFR and since the scheme is not accepted its reference came to be rejected, it cannot be contended that the doctrine of promissory estoppel is operating against the defendants which prevents them from disconnecting the power supply of the plaintiff. The plaintiff company is duty bound to pay the entire arrears due from it to the defendant Nos.1 and 2 and it was never contemplated between the parties that the plaintiff would file one after another references and till then it can

enjoy the said facility only on payment of a meagre amount of RS.10 lacs which has been subsequently enhanced to RS.25 lacs. Therefore, according to me, the fourth contention is also without any merit and is liable to be rejected and accordingly it is rejected.

14. At this stage, it would be appropriate to refer to the judgments of the Supreme Court and various High Courts, relied upon by Mr. Majmudar, learned counsel for the defendants which are very relevant for deciding the point at issue.

(A) In Siliguri Municipality's case (supra), the Supreme Court has said that grant of stay against recovery of graduated consolidated rate on annual value of holdings in terms of amended provisions of Municipal Act is not proper.

(B) In the case of Assistant Collector of Central Excise's case (supra), the Supreme Court has deprecated the practice of granting interim relief for a mere asking and also the granting of interim order practically giving principal relief sought in the petition for a mere reason that prima facie case has been made out.

(C) In Union Territory of Pondicherry's case (supra) the Supreme Court has said that as a matter of course more so where the public revenue is involved, court should not pass interim order. The Court has to apply its mind to facts of each case as also implications and consequences of such order.

(D) A Division Bench of this Court in Kiran Industries's case (supra) has said that the Court should exercise discretion having regard to the facts and circumstances of each case while granting interim relief in the matter of payment of electricity bills. Ordinarily, consumer should be required to deposit the amount of the bill on stipulation that in case the consumer succeeds, the amount would be treated as deposit earning interest at commercial rate.

(E) In I.N. Mahabaleswara Madyasta's case (supra) Karnataka High Court has held that the suit filed for permanent injunction restraining authorities from disconnecting power supply is not maintainable and therefore no relief can be sought to restrain the statutory body from performing its function and duties.

(F) In A.E.N., R.S.E.B's case (supra), Rajasthan High Court has held that refusal of injunction against levy of

the electricity duty would not cause irreparable injury to consumer. Proper order would be to order consumer to deposit amount as per demand notice, under protest and Electricity Board may be restrained from disconnecting the connection, moer so, because if temporary injunction is issued, revenue of Department will be greatly hit.

(G) In Andhra Pradesh State Electricity Board's case (supra), High Court of Andhra Pradesh has observed as under:

> "The Electricity Board is empowered under S.24 of the Act to effect disconnection of supply of electricity to defaulting consumers and to take steps for the recovery of the arrears due to it. This action to be taken by the Electricity Board has nothing to do with the financial condition of a consumer who has used the electricity and is trying to evade the payment for the same. The mere pendency of a representation made to Chief Minister by the consumer praying for instalment facility does not give him right to seek the assistance of Civil Court to restrain disconnection. And the endorsement granting such facility said to have been made on the file by the Chief Minister does not come within purview of a direction given under S.78-A of Electricity (Supply) Act, 1948 on question of policy. More so, when no follow up action had been taken by the State Govt., in pursuance of endorsement made by the Chief Minister. Such endorsement does not create any rights and obligations between the parties."

15. Applying the principles enunciated by the Supreme Court as well as various High Courts in the judgments referred to by Mr. Majmudar, learned counsel for the defendants, I am of the opinion that the defendants is entitled to recovery the entire amount from the plaintiff since the concession granted vide letter dated July 20, 2000 has come to an end on the day when Reference No.103 of 1999 has been rejected and thereby the scheme of rehabilitation is not approved by the BIFR and the plaintiff is bound to pay the entire amount under the impugned notice and on failure to pay the same the defendants are entitled to disconnect the electricity supply to the plaintiff in view of the provisions contained in section 24 (1) of the Act.

16. At this stage it would be appropriate to refer to the latest judgment of the Supreme Court in the case of

Grid Corporation of Orissa Limited v. Indian Charge Chrome Limited, (1998) 5 SCC 438 wherein the Supreme Court has held that at the interim stage court should bear in mind whether prima facie case for recovery of arrears of energy charges is made out and on whose side the balance of convenience lies and in the facts and circumstances of the case whether interim order should be passed by imposing certain conditions or without any condition. It is further held that financial constraints cannot be a ground to allow the respondents to use power without any charges. In view of the ratio laid down by the Supreme Court in the above referred to judgment, the contention that 1100 workers who are employed in the plaintiff company will be unemployed on closure of the company has no substance.

17. Mr. Majmudar, learned advocate for the defendants during the course of his submissions supplied a copy of the order recorded by the BIFR while rejecting the 3rd reference being reference No.199 of 2001 for perusal of this Court. Mr. Soparkar, learned counsel for the plaintiff has objected to the supplying of the copy of the order of the BIFR at this appellate stage and contended that it cannot be looked into as it does not form part of the record of the trial court. It may be noted that the plaintiff has been granted concession vide a letter dated July 20, 2000 till formulation/sanction of rehabilitation scheme by BIFR and the plaintiff's case is based upon the very plea that till today formulation/sanction of rehabilitation scheme by BIFR is pending before Appellate forum, I am of the opinion that this document can be looked into at this stage and, therefore, it would be appropriate to refer to the observations made by the BIFR in para 11 of the said judgment as under:

> "Considering the facts of the case and the submissions made at the hearing, the Bench noted that the promoters/management had systematically and elaborately siphoned away large funds from the company, which had resulted in the erosion of the networth of the company and the case cited in the above paragraphs was not an exclusive incident. The company despite making third reference with the Bench had not submitted various information but was only claiming that the net-worth had become negative because of subsequent liabilities and deprecation. The company would not have become sick had there not been any diversion of funds. The company had failed to establish the bonafides of the purchase

> transactions even from the group concerns by conveniently stating that concerned companies had since been wound up. The fire accident in which records of the company are destroyed were not reported to the BOD at the relevant time which raises serious doubts on such an occurrence. In our view, it is not possible to reconstruct company's past balance sheets which, ab initio, are unreliable. The promoters have approached the Board with unclean hands and deserve no protection."

It may be noted that this Court has given only a passing reference to the said order passed by the BIFR and has not taken into consideration the said order for deciding this Appeal from Order but the said order is quoted so as to exhibit the functioning of the plaintiff company.

18. It may be noted that the very first letter dated July 20, 2000 wherein the concession is granted to the plaintiff company is based on the formulation/sanction of rehabilitation scheme by the BIFR and when the plaintiff company goes on filing one after another references it is not entitled to get the concession continued any further and if the plaintiff company is closed down in the event of cutting off the power supply merely by exposing the case of poor workers the plaintiff is not entitled to get the concession extended by claiming equitable relief of injunction as the plaintiff company must thank to itself for draging the company to such a financial loss.

19. Besides this on having perusal of the reliefs claimed in the plaint as well as reliefs claimed in application Ex.5 which are almost similar and identical and the granting of interim relief would amount to decreeing the suit without adjudication of the contentions raised by the defendants in the written statement. The Supreme Court in the case of Bank of Maharashtra v. Race Shipping and Transport Co. Pvt. Ltd., AIR 1995 SC 1368 has observed that the practice of granting interim orders which particularly gives the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations is deprecated. In the instant case, granting of interim relief would amount to decreeing the suit without adjudicating the claim raised by the plaintiff in the plaint and by the defendants in the written statement. Such a relief is not called for in the facts and on the circumstances of the case. Therefore, the relief claimed

is rightly refused by the trial court.

20. At the cost of repetition, be it stated that electricity is a duty leviable under the statutory provisions of the Act. The company which supplies the electricity is a utility company and therefore injunction against recovery of duty statutorily recoverable should not be granted.

21. On over all view of the matter, I am fully satisfied and convinced that the learned trial Judge has very rightly applied the principles of law of injunction and considered all the documents forming part of the record and has rightly come to the conclusion that there is no contract between the parties, no question of promissory estoppel and therefore the plaintiff company is bound to honour the impugned notice failing which the defendants are entitled to disconnect the electricity supply to the plaintiff in exercise of powers conferred upon them under Section 24 (1) of the Act.

22. Seen in the above context, there is no prima facie case in favour of the plaintiff nor balance of convenience tilts in its favour. So far as irreparable injury is concerned, it would cause to the defendants if injunction is granted in favour of the plaintiff. Therefore, application Ex.5 is rightly rejected by the trial Court which I affirm by this judgment.

23. It is settled principles of law that in Appeal from Order challenge is against the exercise of discretion by the learned Judge of the lower court in granting or refusing the injunction which is an equitable relief. In such appeals, the appellate Court will not interfere with the exercise of discretion of the Court of the first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle and the appellate court will not reassess the material and seek to reach a conclusion different from one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a

judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. The aforesaid principle is enunciated by the Supreme Court in the case of Wander Limited v. Antox India P. Ltd, 1990 (Supp) SCC 727.

24. Applying the aforesaid principles enunciated by the Supreme Court to the facts of the present case, at the cost of repetition, be it stated that the learned Judge has not exercised the discretion arbitrarily, or capriciously or perversely or ignored the settled principles of law regulating grant or refusal of interlocutory injunction.

25. In view of the aforesaid discussion, I am of the opinion that there is no valid reason to interfere with the impugned order and therefore the Appeal from Order deserves to be dismissed at its inception.

26. For the foregoing reasons, the Appeal from Order fails and accordingly it is dismissed at the threshold with costs which is quantified at Rs.15,000/- Accordingly, the plaintiff is directed to deposit the said amount of cost with the defendant GEB within a period of four weeks hereof.

27. Since the Appeal from Order is dismissed, Civil Application No. 2412 of 2002 which is filed for stay of the impugned order does not assume any survival value and hence it is also rejected.

28. At this stage Mr. Soparkar, learned counsel for the plaintiff urges that the interim relief which has remained operative till today by way of understanding between the parties may be ordered to continue for a period of two weeks hereof so as to enable the plaintiff to approach the higher forum. Mr. Majmudar, learned advocate for the defendants has strongly objected to this request. It may be noted that while deciding application Ex.5, no interim relief was granted by the trial court from the very beginning. After hearing both the parties, the learned trial Judge has rejected application Ex.5. However, interim arrangement has remained operative merely by virtue of the mutual understanding between the parties and, therefore, after having decided the matter by this Court, no further indulgence in this regard is called for in this matter. Hence, in the facts and circumstances of the case and since that there is no interim relief granted from the very beginning by this court and it is merely because of arrangement between the

parties or by virtue of the order of the GERC the interim relief has remained operative till today and when this Court has confirmed the order passed by the trial court by holding that there is no prima facie case in favour of the plaintiff and balance of convenience also does not tilt in its favour and irreparable injury would be caused to the defendants if injunction is granted in favour of the plaintiff by relying on various judgments of the Supreme Court as well as various High Courts, such a relief cannot be granted in this case and hence the prayer is rejected.

(A.M. Kapadia, J.)

(karan)